

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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JOHN H. SMITH, JR.,

Plaintiff,

v.

Case No. 07-C-356

MELVIN PULVER, TOM GOZINSKE,  
JAMES SCHWOCHERT, JOHN RAY,  
RICK RAEMISCH and UNKNOWN,

Defendants.

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**DECISION AND ORDER**

Plaintiff, John H. Smith, Jr., filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 and is proceeding *in forma pauperis* on various claims. Currently pending is the defendants' motion for summary judgment.

The defendants filed a motion for summary judgment on January 29, 2008. The plaintiff did not file a response to the defendants' motion. Federal Rule of Civil Procedure 41(b) provides for involuntary dismissal for failure to prosecute an action or to comply with court orders. Additionally, a plaintiff's failure to respond that delays the litigation can be a basis for a dismissal for lack of prosecution. *Bolt v. Loy*, 227 F.3d 854, 856 (7th Cir. 2000); see also *Rice v. City of Chicago*, 333 F.3d 780, 785-86 (7th Cir. 2003) ("the ultimate sanction of dismissal should be involved only in extreme situations, where there is a clear record of delay or contumacious conduct."). However, no case should be dismissed for failure to prosecute without a warning to the plaintiff, either explicitly or by making clear that no further

extensions of time will be granted. *Bolt*, 227 F.3d at 856 (citing *Williams v. Chic. Bd. of Educ.*, 155 F.3d 853 (7th Cir. 1998)).

By order dated January 29, 2008, the court granted the plaintiff additional time until February 19, 2008, to file a response to the defendants' motion. On that date, the court advised the plaintiff that his action could be dismissed for failure to prosecute if he failed to file a response by February 19, 2008. To date, no response has been filed.

In light of the foregoing, the court finds that the plaintiff has been given ample time to respond to the defendants' motion and he has been warned that this action is subject to dismissal. Nevertheless, the plaintiff failed to file a response to the defendants' motion. Therefore, this action will be dismissed for failure to prosecute. The plaintiff may petition for reinstatement within 20 days. See Civil Local Rule 41.3 (E.D. Wis.).

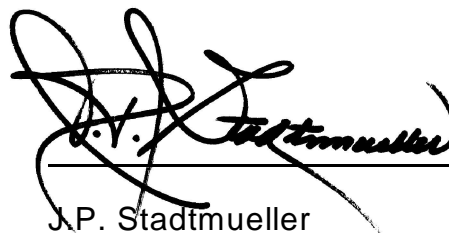
Accordingly,

**IT IS, THEREFORE, ORDERED** that this action be and the same is hereby **DISMISSED**, with prejudice, for failure to prosecute.

The Clerk of Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 21st day of February, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line. The signature is stylized and cursive.

J.P. Stadtmueller  
U.S. District Judge